

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

LEOPOLDO MORENO,

Defendant and Appellant.

C060648

(Super. Ct. No.
CR493432)

Defendant Leopoldo Moreno¹ and two cohorts cruised through the parking lot of an apartment complex in a Chevy Blazer, harassing and yelling obscenities at three minors. They drove off when a sheriff's deputy stopped to talk to the minors, but soon returned, calling the minors "snitches" and threatening to kill them. Defendant held a handgun out the window of the Blazer and fired several shots, hitting the sister of one of the

¹ Defendant is an admitted affiliate of the Norteno criminal street gang.

minors in the upper arm as she stepped outside her apartment to empty the trash.

Deputies executed a search warrant at defendant's home. In one of the bedrooms, they found gang paraphernalia including a school yearbook with gang graffiti on it and computer files containing gang drawings, hand signs and other gang-related items.

Represented by counsel, defendant pleaded guilty to participation in criminal street gang activity (Pen. Code, § 186.22, subd. (a))² and discharging a firearm from a motor vehicle at another person (§ 12034, subd. (c)) in exchange for dismissal of all remaining charges and special allegations with a *Harvey* waiver.³

The court denied probation and sentenced defendant to the upper term of seven years on the principal count and a consecutive term of eight months (one-third the middle term) on the remaining count for an aggregate sentence of seven years and eight months in state prison, minus 351 days of presentence custody credit. The court imposed a restitution fine of \$3,200 (§ 1202.4, subd. (b)), a parole revocation fine of \$3,200 (§ 1202.45) stayed pending successful completion of parole, and \$390 for preparation of the probation report (§ 1203.1b), and

² Hereafter, undesignated statutory references are to the Penal Code.

³ *People v. Harvey* (1979) 29 Cal.3d 754.

reserved jurisdiction over the amount of restitution to be paid to the victim.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error in favor of defendant.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

CANTIL-SAKAUYE, J.